

UNDERGROUND STORAGE TANK (UST) COMPLIANCE INSPECTION

DATE: January 6, 2006

INSPECTORS: Madho Ramnarine Singh Credential # 23599

FACILITY: AM FOOD AND GAS

LOCATION: 11670 Jones Bridge Rd., Alpharetta, GA 30005

FACILITY REPRESENTATIVE: Ms. Carol Cortez

FACILITY OWNER: Mr Dilbag Khara

Ben Singh

Inspector's credentials were presented to Ms. Carol Cortez

Facility Equipment Information:

The facility is owned and operated by Mr. Dilbag Khara. The facility is a service station. The facility consists of two (2) fiberglass tanks. There are two (2) 12,000 gallon USTs, storing unleaded gasoline fuel. The piping system is pressurized with line leak detectors (LLDs). Release detection is an ATG (Gilbarco - EMC). The spill buckets were dirty with water. No Overfill devices were observed during the inspection.

Records:

No inspection records were available onsite. Ms. Cortez contacted Mr. Khara by cell phone. Mr. Khara indicated that he received the notice of inspection but he forgot that today was the inspection. I asked Mr. Khara for the documentation requested in the notice of inspection and he indicated that he has the documentation at home. At the conclusion of the inspection, I left a request for information checklist with Ms. Cortez to give to Mr. Khara who was suppose to come to the facility later that afternoon. On January 18, 2006, I spoke to Ms. Cortez and she indicated that she did in fact gave Mr. Khara the information request and I also asked for his telephone number but she indicated that she cannot give me that number. I also asked Ms. Cortez to tell Mr. Khara to call me at 404-562-9464. On January 20, 2006, I spoke to Ms. Cortez again and she indicated that she gave Mr. Khara the message to call me. As of January 31, 2006. Mr. Khara has failed to contact the EPA or provide the requested documentation in response to the inspection event on January 6, 2005.

Notification:

The facility is registered with the Georgia State Department of Natural Resources, Environmental Protection Division. The facility ID # is 10000667

Cathodic Protection:

The USTs are not required to have CP.

Release Detection:

The facility utilizes an ATG (Gilbarco EMC) as the preferred method of release detection. The alarm lights were on and the front panel broken. A check of the ATG system indicate that the probe was out in Tank 1 (regular). Tank 1 was tested for product and water using Kut Chemical detecting paste. UST 1 had 25 inches of product and 1 inch of water. The ATG indicated that Tank 2 (premium) had 17.35 inches of product and 0 inches of water. UST 2 was tested for product and water using Kut chemical detecting paste. UST 2 had 16 inches of product and 0 inches of water. There were no documentation onsite for line tightness tests. Ms. Cortez was given a request for information checklist to give to Mr. Khara.

Spill and Overfill Protection:

Spill prevention was accomplished through the use of spill buckets. All buckets were dirty and had water. No overfill devices were observed during the inspection.

Release Reporting:

None

Violations:

Release Detection

§280.34(b) (4) Failure to maintain documentation of compliance with release detection

§280.40(a) Failure to perform adequate release detection

§280.44 Failure to perform adequate release detection on piping


§280.20(c)(1)(ii) – Failure to use adequate overfill prevention system in a new UST

Subpart B: UST Systems: Design, Construction, Installation and Notification

§280.20(c)(1)(ii) Failure to use adequate overfill prevention system in a new UST

Recommendation:

Issue Field Citation No:000561 on January 31, 2006.


INSPECTOR

1/31/2006
DATE



United States Environmental Protection Agency (EPA)
Region 4

AFC, 61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Underground Storage Tank (UST) Inspection Form

LAT:

LONG:

DATE:

1/6/2006

I. Ownership of Tank(s) <input type="checkbox"/> Tribal		II. Location of Tank(s) <input type="checkbox"/> same as owner location (I)	
Owner Name: <u>DILBAG KHERA</u>		Facility Name or Company Site identifier, as applicable <u>Am FOOD AND GAS</u>	
Street Address <u>11670 JONES BRIDGE RD.</u>		Street Address or State Road, as applicable <u>11670 Jones bridge Rd</u>	
County <u>ALPHARETTA GA 30005</u>		County <u>Alpharetta GA 30005</u>	
City <u>770-346-9450</u>		City(nearest) <u>Alpharetta GA 30005</u>	
State <u>GA</u>		State <u>GA</u>	
Zip Code <u>30005</u>		Zip Code <u>30005</u>	
Phone Number <u>770-346-9450</u>		Contact Person(s) at Facility <u>Carol Cortez</u>	
Owner Contact Person <u>MR. DILBAG KHERA</u>		Phone Number <u>770-346-9450</u>	
III. Notification			
<input checked="" type="checkbox"/> Notification to implementing agency; name <u>GEPCD</u> State Facility ID # <u>10000667</u>			
IV. Financial Responsibility			
<input checked="" type="checkbox"/> State Fund <u>GUST</u> <input type="checkbox"/> Private Insurance: Insurer/Policy # _____			
<input type="checkbox"/> Guarantee <input type="checkbox"/> Surety Bond <input type="checkbox"/> Letter of Credit <input type="checkbox"/> Self Insured			
<input type="checkbox"/> Local Government <input type="checkbox"/> Not Required (Federal & State government)			
V. Release History			
<input type="checkbox"/> Evidence of release or spills at facility <input type="checkbox"/> Greater than 25 gallons (estimate)			
<input type="checkbox"/> Releases reported to implementing agency; if so, date(s) _____ [280.53]			
<input type="checkbox"/> Release confirmed; when and how _____			
<input type="checkbox"/> Initial abatement measures and site characterization <input type="checkbox"/> Free product removal			
<input type="checkbox"/> Soil or ground water contamination <input type="checkbox"/> Corrective action plan submitted			
<input type="checkbox"/> Remediation ongoing <input type="checkbox"/> Remediation completed, no further action; date(s) _____			
<input type="checkbox"/> Unknown			

State of Georgia Annual UST Registration Certificate
Expiration 12/31/2006.

PART 1

Comments/Recommendations:

VI. Tank Information	Tank No.	1	2				
Tank presently in use		Yes	Yes				
If not, date last used (see Section IX.)							
If empty, verify 1" or less left (see Section IX.)							
M/Y Tank installed (mm/dd/yr)							
Material of Construction : bare steel, CP steel, composite, FRP, etc internal liner, excavation liner double-walled (DW)		FRP	FRP				
Capacity of Tank (gal)		12000	12000				
Substance Stored		gasoline	gasoline				

VII. Piping Information							
Piping Type	Pressurized	✓	✓				
	Suction						
Piping Material: FRP, steel, flex, etc. Secondary containment (SC). Double-walled (DW)		FRP	FRP				

Tank or piping properly designed and constructed according to a code of practice developed by a nationally recognized association or independent testing laboratory [280.20(a), 280.20(b)] Y ☐ N ☐ Unknown ☐

VIII. Repairs		N/A <input type="checkbox"/>
Repairs are conducted according to a code of practice [280.33(a)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>		
Metal piping sections/fittings that are damaged and have released product are replaced [280.33(c)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>		
Repaired tanks and piping are tightness tested within 30 days of repair completion (except when internal inspection conducted or monthly monitoring is conducted) [280.33(d)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>		
CP systems are tested/inspected within 6 months of repair of any cathodically protected UST system [280.33(e)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>		
Records of repairs are maintained [280.33(f)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>		

IX. Temporary Closure		N/A <input type="checkbox"/>
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CP is continued to be maintained [280.70(c)] Y ☐ N ☐ Unknown ☐

Release detection is being used and UST system contains product [280.70(a)] Y ☐ N ☐ Unknown ☐

Comments/Recommendations:

X. Corrosion Protection (CP) ☒ Components constructed of non-corrosive materials, e.g., FRP, dielectric coatings, plastic, etc. [280.20(a)(1), 280.20(a)(3), 280.20(a)(5), 280.20(b)(1), 280.20(b)(4)]

Records by corrosion expert to document that CP is not necessary [280.20(a)(4)(ii), 280.20(b)(3)(ii)] Y ☐ N ☐ Unknown ☐ N/A ☐

Steel tank or piping coated with suitable dielectric material and cathodically protected [280.20(a)(2)(i), 280.20(b)(2)(i)] Y ☐ N ☐ Unknown ☐

Field-installed CP system designed by a corrosion expert [280.20(a)(2)(ii), 280.20(b)(2)(ii)] Y ☐ N ☐ Unknown ☐ N/A ☐

CP system tested and documentation maintained every three years or a time frame established by implementing agency [280.31(b)(1), 280.31(d)(2)] Y ☐ N ☐ Unknown ☐

Criteria used to determine that CP is adequate was in accordance with a standard code of practice developed by a nationally recognized association [280.31(b)(2)] Y ☐ N ☐ Unknown ☐

CP system did not meet acceptable criteria at last test and action was taken by owner/operator to correct problem [280.31(b)(2)] Y ☐ N ☐ Unknown ☐ N/A ☐

Lining: [280.21(b)]	N/A <input type="checkbox"/>						
Periodic lining inspection requirements for tank met [280.21(b)(1)(ii)]	N/A <input type="checkbox"/>						
Documentation that lining was installed [280.21(b)(1)(i)]	Shell integrity tested? N/A <input type="checkbox"/>						
Sacrificial Anode:	N/A <input type="checkbox"/>						
Date of last two 3 yr test results available?							
Last 3 yr test results show a voltage of at least -850mV? Y or N							
Impressed Current:	N/A <input type="checkbox"/>						
CP system operated and maintained continuously. [280.31(a)]							
Date of last two 3 yr test results available?							
CP inspected and documentation maintained every 60 days to ensure equipment is running properly. [280.31(c)]	Last three test results available? Y or N						
UST system components isolated/protected? Y or N							

XI. Spill and Overfill Protection [280.21(d)] Indicate any USTs filled by transfers < 25 gallons

☐ For transfers greater than 25 gallons

Spill Prevention:							
Device is present and functional? [280.20(c)(1)(i)]	Yes	Yes					
Spill bucket free of water, debris, etc.	No Duty	No Duty					

No Overfill present

Overfill Prevention:							
Device is present and operational? [280.20(c)(1)(ii)]							
Ball float valve Operational: [280.20(c)(1)(ii)(B)] <input type="checkbox"/> Unknown Not suitable on a suction system!							
Flapper valve Operational: [280.20(c)(1)(ii)(B)]							
Automatic shutoff: Operational: [280.20(c)(1)(ii)(A)]							
Alarms Operational: [280.20(c)(1)(ii)(B)]							
Visible and/or audible to jobber/driver? Location?							
Failure to take necessary precautions to prevent a spill or overfill during product delivery [280.30(a)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>							

Piping and Tank Leak Detection

Release detection present [280.40(a)] Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Deferred [280.10(d)] Emergency Generator -Tank(s) # _____
Release detection system operating properly (i.e., system must be able to detect a release from any portion of the tank and piping that routinely contains product) [(280.40(a)(1))] Y <input type="checkbox"/> N <input type="checkbox"/>
Release detection system meets the performance requirements at 280.43 or 280.44 [(280.40(a)(3))] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>
Implementing agency has been notified of a suspected release as required, or when a release detection method or device alarms or fails a test [(280.40(b))] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/> N/A <input type="checkbox"/>
Tanks and piping are monitored monthly for releases and records available (must have records for the two most recent consecutive months and for 8 months of the last 12 months). [280.41(a), and 280.45(b)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>
Meets performance requirements for tank and line tightness test and maintains records. [280.43(c), 280.44(b), and 280.45(b)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>
Hazardous Substance UST Systems: N/A <input type="checkbox"/>
Release detection requirements are complied with for UST systems containing product. [(280.42)(b)] Y <input type="checkbox"/> N <input type="checkbox"/> Unknown <input type="checkbox"/>
Comments/Recommendations:

Pressurized Piping		TWO METHODS MUST BE SELECTED; ONE FROM EACH SET.					
SET 1	Tank No.	1	2				
Automatic Line Leak Detector (ALLD) installed (give date last tested/checked)		LLD	LLD				
Annual test of the operation of the leak detector within last 12 months [280.44(a)] * In accordance with the manufacturer's requirements							
Operating so as to alert the operator to the presence of a leak (see 280.44(a) for description of ALLD) [280.44(a)] Unknown <input type="checkbox"/>							
Automatic Shut-off Device (Electronic line leak detector (ELLD)) N/A <input type="checkbox"/>							

Continuous Alarm System (sump sensor/double-walled piping) Must meet leak threshold for large and small releases N/A <input type="checkbox"/>						
SET 2						
Annual Line Tightness Testing						
Vapor Monitoring						
Interstitial Monitoring						
Ground Water Monitoring						
Other (SIR, etc.)						
Suction Piping Indicate date of most recent test						
Line Tightness Testing (required every 3 yr)						
Vapor Monitoring						
Secondary Containment with Interstitial Monitoring						
Ground-Water Monitoring						
Other						
No Leak Detection Required (must answer yes to all of the following questions):						
Operates at less than atmospheric pressure						
Has only one check valve which is located directly under pump (dispenser)						
Slope of piping allows product to drain back into tank when suction released						
Tank Release Detection (refer to appropriate detailed RD form)						
Tightness Testing and Inventory Control						
Vapor Monitoring						
Interstitial Monitoring						
Ground Water Monitoring						
Automatic Tank Gauging (ATG)	✓	✓				
Manual Tank Gauging (MTG)						
Statistical Inventory Reconciliation (SIR)						

Gilbert

EMC

Comments/Recommendations:



THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) REGION 4
UST SECTION (GWDWB-15)
AFC, 61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
404.562.
FAX: 404.562.9439

Inspector Observation Report
Inspection of Underground Storage Tanks (USTs)

<input type="checkbox"/> No violations observed at the conclusion of this inspection.	
<input type="checkbox"/> The above named facility was inspected by a duly authorized representative of EPA Region 4, and the following are the inspector's observations and/or recommended corrective action(s):	
Violations Observed:	
Regulatory Citation	Violation Description
\$	
\$	
\$	
\$	
\$	
\$	
\$	
\$	
\$	

Actions Taken:

☐ Field Citation; # _____ ☐ Additional Information required ☐ On-site request/Due date _____

Comments/Recommendations:

Name of Owner/Operator Representative:

(Please print)

(Signature)

Other Participants:

Name of EPA Representative:

MADHO LAMNARINE SINGH

(Please Print)

Madho Lamnarine Singh

(Signature)

23599

(Credential Number)

Date of Inspection 1/6/2006 Time _____ AM PM

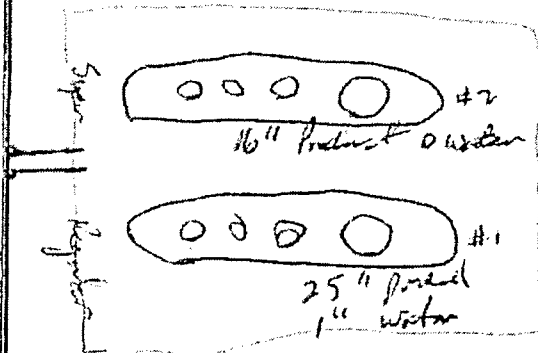
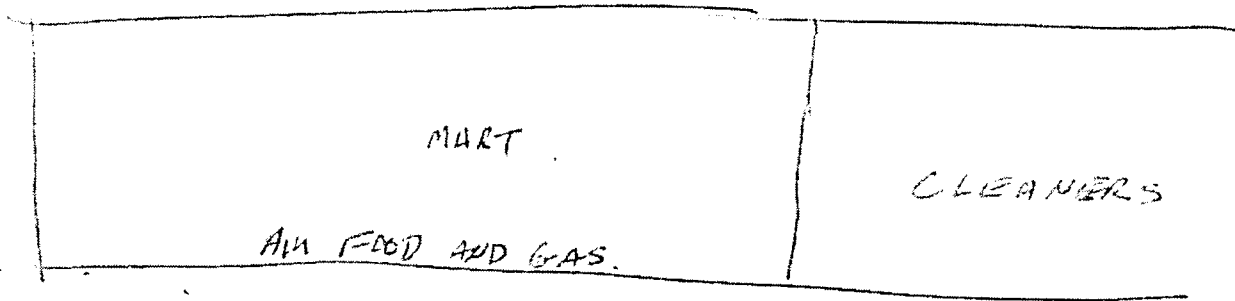
SITE DRAWING

DATE: 1/6/2006 TIME ON SITE: 1:30 TIME OFF SITE: _____

WEATHER: cloudy

ENVIRONMENTALLY SENSITIVE AREA: Y ☐ N ☐

If "Yes", please describe:



San Jose Bridge Road 9

☒ Pictures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

UST Facility Name: AM FOOD AND GAS

UST Facility Address: 11670 JONES BRIDGE RD

UST Owner/Operator Name: DILBAG S KHERA

On January 6, 2006 the United States Environmental Protection Agency conducted an underground storage tank (UST) compliance inspection of your facility to determine your compliance with 40 C.F.R. Part 280. 40 C.F.R. § 280.34 requires that owners and operators of USTs maintain certain records and provide such records for inspection upon request.

You are hereby requested to provide the following records which were not available at the time of the inspection:

- ☒ Identify all underground storage tanks in existence at the subject facility, since December 22, 1980. Include the year of installation, composition of tanks and piping and identify if permanently closed, in temporary closure, or in active use.
- ☒ Provide copies of current UST notification forms filed with and certificates received from the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) for all UST systems owned and/or entered at the subject facility.
- ☒ Identify and document the release detection method used for each currently active UST system at the subject facility, as required by 40 C.F.R. Part 280.41. Provide documentation for the past twelve months of tank and piping release detection performed for each UST system. Include any tank or piping tightness tests, SIR results, inventory control records, ground water monitoring results, vapor or other records of release detection.
- ☒ Document the manner in which the owner has demonstrated financial responsibility as required by 40 C.F.R. Part 280 Subpart H. If the state trust fund is used, show evidence the financial responsibility requirements have been met for the deductible portion.
- ☐ Identify the type of corrosion protection system (sacrificial anode or impressed current) used on each UST system containing buried metallic components. Provide documentation of the last two cathodic protection system tests required by 40 C.F.R. § 280.31(b) (every 3 years), and/or, documentation of the last three impressed current system tests required by 40 C.F.R. § 280.31(c) (required every 60 days), whichever is applicable.
- ☒ Identify any type of repairs made to tanks or piping, and submit records that indicate the system was as tightness tested prior to being returned to service, as required by 40 C.F.R. §§ 280.33(a) and 280.33(d), whichever is applicable.
- ☒ Other: Provide documentation for leak tight protection.

The records should be postmarked within two business days of the inspection and mailed to the undersigned enforcement officer at the following address:

United States Environmental Protection Agency
Region 4
Atlanta Federal Center
Underground Storage Tank Section (GWDW)
61 Forsyth Street
Atlanta, Georgia 30303-8960

ATTN:

Madho Ramnarine Singh

23599

1/6/2006.

Enforcement Officer

Credential number

Date _____



Printed on Recycled Paper

RECEIVED
EPA REGION IV
2009 DEC 17 PM 2:33

Dilbag Kherra
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Docket No.
RCRA-UST-04-2009-000F

Proceeding under Section 9006
of the Resource Conservation
and Recovery Act, as amended
42 U.S.C. § 6991e

I. NATURE OF THE ACTION

I. NATURE OF THE ACTION

1. The United States Environmental Protection Agency issued an Administrative Complaint to Dilbag Khara on June 1, 2009, pursuant to Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e et seq., and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("C.R.O.P."), 40 C.F.R. Part 22.
2. Complainant is the Director, RCRA Division, Region 4, United States Environmental Protection Agency (EPA). Complainant is authorized to issue the instant Consent Agreement and Final Order (CAFO) pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and applicable delegations of authority.
3. Respondent is Dilbag Khara, the previous owner and operator of AM Food and Gas.
4. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle the action initiated by EPA's Complaint, docket number RCRA-UST-04-2009-0001. Accordingly, before any testimony has been taken on the pleadings, and without any admission of violation, or adjudication of any issue of fact or law, Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENTS

5. Respondent has been served with the Administrative Complaint and has been given notice of opportunity for a hearing.

6. For the purposes of this CAFO, Respondent admits the jurisdictional allegations pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.
7. Respondent is a "person" as defined in 40 C.F.R. § 280.12 and GA. COMP. R. & REGS. r. 391-3-15-.02(o).
8. The Respondent's facility, AM Food and Gas, was located at 11670 Jones Bridge Road, Alpharetta, Georgia 30005 (the facility).
9. Respondent was the "owner" and "operator" of the "USTs" at the facility, as those terms are defined in 40 C.F.R. § 280.12, and GA. COMP. R. & REGS. r. 391-3-15-.02(m), (l), and (z).
10. Respondent was using the two USTs at the facility to store gasoline, which is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and GA Code Ann. § 12-3-3.
11. Pursuant to 40 C.F.R. 22.18(b)(2), Respondent neither admits nor denies the factual allegations set forth in the Complaint.
12. Respondent waives any right to contest and have a hearing on the allegations in the Complaint, and its right to appeal the CAFO.
13. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO on the basis of any issue related to the Paperwork Reduction Act.
14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be served with and reply to any memorandum or communication addressed to EPA officials, or to be present during any discussion with EPA officials, where the purpose of such discussion, memorandum or communication is to persuade such officials to accept and issue this CAFO.
15. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA.
16. The parties agree that compliance with the terms of this CAFO shall resolve the violations of RCRA Subtitle I alleged in EPA's Complaint, docket no. RCRA-UST-04-2009-0001.
17. Each party will pay its own costs and attorney's fees.

III. PAYMENT OF CIVIL PENALTY

Based on the foregoing, the parties agree to the following:

18. Respondent consents to the assessment of and agrees to pay the civil penalty set forth below.

19. Pursuant to Section 9006 of RCRA and 40 C.F.R. § 22.18, given the nature of the violations and taking into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements, Respondent shall pay a civil penalty in the amount of nine thousand, five hundred dollars (\$9,500), divided into four installment payments including interest, as set forth in paragraph 20 below.

20. A total of four payments of \$2,401.68 will be due and owing to EPA. One payment of \$2,401.68 must be received by EPA by each of the following dates: January 30, 2010; April 30, 2010; July 30, 2010; and October 30, 2010.

21. Payment shall be made by cashier's check, certified check, by electronic fund transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 - checking
Environmental Protection Agency
808 17th Street NW
Washington, DC 20074
Contact: Jesse White, (301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Mr. Bill Truman, Chief
Underground Storage Tank Section
RCRA Management Division
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

22. If payment is not received by the due dates specified above, interest shall begin to accrue at the current U.S. Treasury rate, and handling charges and late-payment penalties will begin to accrue as set forth in 30 U.S.C. § 3717 and 40 C.F.R. § 13.11(b) and (c), and Respondent will be deemed in violation of this CAFO. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- (a) Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.
- (c) Non-Payment Penalty. On any portion of a civil penalty or stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

23. If Respondent fails to meet the payment requirements of Paragraphs 20 and 21, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day Respondent is late.

IV. RESERVATION OF RIGHTS

24. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), or other statutory authority, should EPA find that the release of regulated substances from a UST may have occurred and implementation of any corrective action is needed to address such release.

25. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.

26. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions, including the right to pursue criminal enforcement or the right to initiate an action for imminent and substantial endangerment, available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provisions of law. Compliance with this CAFO shall not be a defense against any action subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

27. Except as expressly provided herein, nothing in this CAFO shall constitute a release from any claim (civil or criminal), cause of action, or demand in law or equity by or

against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to Respondent's management of the USTs located at his facilities.

28. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

29. The provisions of this CAFO shall be deemed satisfied when Respondent has fully fulfilled the payment obligations required by this CAFO.

30. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

V. PARTIES BOUND

31. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

32. No change in ownership, partnership, corporate, or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.


33. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to it.

VI EFFECTIVE DATE

34. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

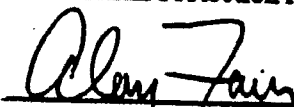
AGREED AND CONSENTED TO:

Dilbag Khara, Respondent

By: 
Dilbag Khara
1108 Hampton Ave. NW
Aiken, South Carolina 29482

Dated: 11-19-09

U.S. Environmental Protection Agency, Complainant

By: 
G. Alan Farmer, Director
RCRA Division
U.S. EPA, Region 4

Dated: 12/14/09

VI. EFFECTIVE DATE

34. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Dilbag Khera, Respondent

By: _____
Dilbag Khera
1108 Hampton Ave. NW
Aiken, South Carolina 29482

Dated: _____

U.S. Environmental Protection Agency, Complainant

By: _____
G. Alan Farmer, Director
RCRA Division
U.S. EPA, Region 4

Dated: _____

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Dilbag Khera, Docket Number: RCRA-UST-04-2009-0001, on the parties listed below in the manner indicated:

Deborah Benjamin, Associate Regional Counsel (EPA's internal mail)
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Dilbag Khera
1108 Hampton Ave., NW
Aiken, South Carolina 29482

(Certified Mail, Return Receipt Requested)

Eckhart Blackert
Mills and Hoopes, LLC
1550 North Brown Rd.
Suite 130
Lawrenceville, GA 30043

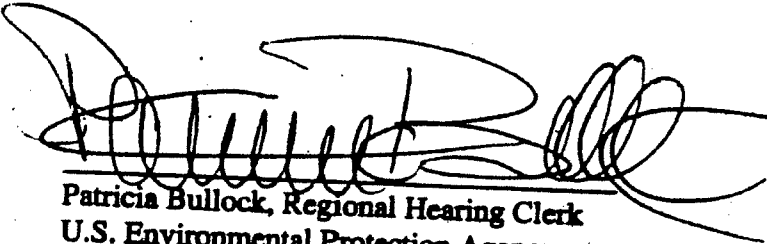
(Certified Mail, Return Receipt Requested)

The Honorable Susan Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-2001

(Certified Mail, Return Receipt Requested)

Date

12-18-09


Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

REDACTED

CASE CONCLUSION DATA SHEET

- (To Be Submitted to OEA When:
- (1) Judicial Consent Decree/Orders Are Entered by Court
 - (2) Administrative Penalty Settlements Are Filed, Along with an Administrative Action Data Sheet
 - (3) Administrative Non-Penalty (Compliance) Orders are Issued, Along with an Administrative Action Data Sheet)

NOTE: Form Will Be Returned If This Section is Incomplete

Name of Person Completing Form: Ben Singh Date: 10/21/2009

Printed Name of Program Office Supervisor or Designee: Bill Truman Date: 10/21/2009

Signature of Program Office Supervisor or Designee: [Signature]

(NOTE: By signing as the program office supervisor, you are verifying that you have checked the pollutant calculations and costs in the Injunctive Relief/Compliance Action (Section E) section of this form.)

A. Case and Facility Background

1. Court Docket/Regional Hearing Clerk Docket No.: RCRA-UST-04-2009-001

2. Case Name/Site Name: Pilbag Ikhera

3. Settlement Action Type: (AM Food and Gas)

- ☐ (a) CD or Court Order Resolving Judicial Action (Requires Completion of Accounts Receivable Form)
- ☒ (b) Administrative Penalty Order (with/without Injunctive Relief)
- ☐ (c) Superfund Administrative Cost Recovery Agreement
- ☐ (d) Federal Facility Compliance Agreement (NOT including RCRA Matters)
- ☐ (e) Administrative Compliance Order
- ☐ (f) Notice of Determination
- ☐ (g) Federal Facility ROD

EPA Lead Attorney: Deborah Benjamin Phone No: (404) 562-9561

EPA Program Contact: Ben Singh Phone No: (404) 562-8922

5. Was An Environmental Management System Requested? ☐ Yes ☒ No

6. Action Dates: (Complete **EITHER** Administrative **OR** Judicial):

Administrative:

Issued/Filed: 6/27/2009

Final Order: 12/17/2009

Judicial:

Complaint Filed: _____

Settlement Lodged: _____

Settlement Entered: _____

ESTIMATED Termination Date: _____

8. Statute(s) and Section(s) Violated (NOT Authorizing Section):
(e.g., CAA, EPCRA, CERCLA, etc., NOT U.S.C. nor CFR)

RCRA /9003 _____/_____/_____

Authorizing Section(s) for Administrative Actions: RCRA /9006 _____/_____

If you have any questions, please contact Teresa Shirley (2-9647) or Priscilla Johnson (2-9614)

ALTERNATIVE DISPUTE RESOLUTION

REDACTED

Exemption 7

- ☒ (A) Interference with Enforcement Proceedings
- ☐ (B) Right to Fair Trial
- ☐ (C) Unwanted Invasion of Personal Privacy

- Exemption 5
- ☒ Predecisional/Deliberative
 - ☐ Attorney work product
 - ☒ Attorney-client privilege

D. SUPPLEMENTAL ENVIRONMENTAL PROJECT INFORMATION

(If More Than One SEP, Complete Separate Page for EACH SEP)

15. Is Environmental Justice Addressed by Impact of SEP? _____ Yes X _____ No

16. SEP Description _____

17. Category of SEP(s) (Check ONLY one):

18. Cost of SEP: \$ _____

- ☐ Public Health
- ☐ Pollution Prevention (**Complete Question #19**)
 - ☐ Equipment/Technology Modifications
 - ☐ Process/Procedure Modifications
 - ☐ Production Reformulation/Redesign
 - ☐ Raw Materials Substitution
 - ☐ Improved Housekeeping/O&M/Training/Inventory Control
 - ☐ In-Process Recycling
 - ☐ Energy Efficiency/Conservation
- ☐ Pollution Reduction (**Complete Question #19**)
- ☐ Environmental Restoration and Protection
- ☐ Assessments and Audits
- ☐ Environmental Compliance Promotion
- ☐ Emergency Planning and Preparedness
- ☐ Other Program-Specific SEP

19. Quantitative Environmental Pollutants and/or Chemicals and/or Waste Streams, Amount of Reductions/ Eliminations (e.g., Emissions/Discharges) – Complete All Four Columns Below:

Pollutants/Chemical Waste Stream	Annual Amount	Units* (See List Below)	Potentially Impacted Media** (See List Below)
	CHECK ONE: <input type="checkbox"/> Reduced <input type="checkbox"/> Eliminated <input type="checkbox"/> Treated		
_____	_____	_____	_____
_____	_____	_____	_____

***Acceptable Units**

Acres
 Building Units
 Cubic Yards
 Gallons
 Gallons Spilled
 Single-Family Housing Units
 Multi-Family Housing Units
 Pounds Per Year
 Linear Feet of Small Stream (<10 ft. Wide)
 Linear Feet of Med. Stream (10-20 ft. Wide)
 Linear Feet of Large Stream (>20 ft. Wide)
 People (SDWA/FIFRA)
 Number of Schools
 Number of Wells (UIC)

****Acceptable Potentially Impacted Medias**

Air
 Animals
 Animals (FIFRA Only)
 Housing
 Humans
 Humans (FIFRA Only)
 Land
 Land (Includes RCRA Waste, FIFRA Pesticides, and TSCA Asbestos/PCBs)
 Plants
 Plants (FIFRA Only)
 Schools
 Schools/Housing/Bldgs (Includes TSCA Lead Paint & Asbestos)
 Soil
 Soil (CERCLA & RCRA Corrective Action, TSCA PCBs, UST Soil, & UIC Remedial Activities)
 Soil Vapor
 Water (Underground Source)
 Water (Biosolids and Other Sludges)
 Water (Drinking)
 Water (Ground)
 Water (Underground Source of Drinking Water)
 Water (Navigable/Surface)
 Water (Sediment)
 Water (Stormwater)
 Water (Wastewater to POTW)
 Water (Water (Wetlands))

REDACTED

(If No, Skip to Next Page)

Was the Disclosure Resolved Under: Audit Policy Small Business Policy

If Resolved Under Small Business Policy, Provide SIC Code: _____

Was Disclosure Referred By Another Region or HQ? Yes No

If Yes, What Office? _____

Was Disclosure Part of Compliance Incentive Program? Yes No

If Yes, Choose All That Apply:

- ☐ Bakers CFC Partnership
☐ CMOM POTW Program
☐ Colleges & Universities Program
☐ Grain Processing Program
☐ Industrial Organic Chemical Program
☐ Lead Disclosure Program
☐ National Iron & Steel Incentive Program
☐ Oil & Gas Program
☐ Prisons Program
☐ Storage Tank Emission Reduction Program
☐ Stormwater/Commercial Development Program
☐ Telecommunications Incentive Program
☐ Wood Treating Program
☒ (A) Interference with Enforcement Proceedings
☐ (B) Right to Fair Trial
- Activities Associated With This Disclosure? _____

Number of Facilities Associated With This Disclosure? _____ (B) Right to Fair Trial

Any Outstanding Issues? _____ Yes _____ No (C) Unwanted Invasion of Personal Privacy
If Yes, Please Describe _____

Gravity-Based Penalty Calculation Before Mitigation: \$ _____

% and Amount of Gravity-Based Penalty Waived: _____ % AND \$ _____

Gravity-Based Penalty Assessed: \$ _____

Economic Benefit Assessed: \$ _____

Rationale for Not Applying Disclosure Policy:

- ☐ No Violation Occurred
☐ Discovery Not Voluntary
☐ Entity Had Repeat Violations
☐ Violation(s) Not Corrected Expeditiously
☐ Cooperation Insufficient
☐ Fed. Facility That Would Not Be Liable for a Penalty
- ☐ Not a Systematic Discovery
☐ Disclosure Not Prompt
☐ Agreement or Order Violated
☐ Discovery & Disclosure Not Independent
☐ Actual Serious Harm or Imminent & Substantial Endangerment
☒ (A) Interference with Enforcement Proceedings
☐ (B) Right to Fair Trial
☐ (C) Unwanted Invasion of Personal Privacy
- 6 -
- October 1, 2006

E. INJUNCTIVE RELIEF/COMPLIANCE ACTIONS (NON-SEP RELATED).

(Note: Penalty orders without injunctive relief and Superfund administrative cost recovery agreements **SHOULD SKIP THIS SECTION.**)

(These instructions pertain to how to complete the following pages.)

REDACTED

Exemption 7

☒ ~~Interference with Enforcement Proceedings~~

~~Right to Fair Trial~~

~~(d) unwanted invasion of Personal Privacy~~

Exemption 5

☒

~~Predecisional/Confidentiality~~

~~Attorney work product~~

~~Attorney-client privilege~~

ALL STATUTES

FACILITY MANAGEMENT AND INFORMATION PRACTICES (FMIP)

(Actions That Do Not Result in Pollutant Reductions/Eliminations)

\$ Estimated Cost of Actions Checked Off On This Page. (REQUIRED!
IF YOU HAVE ANYTHING CHECKED OFF BELOW, YOU MUST INCLUDE A COST ESTIMATE. FORM WILL BE
RETURNED IF THIS FIELD IS BLANK!)

- ☐ Asbestos Inspections
- ☐ Auditing
- ☐ CERCLA RI/FS or RD
- ☐ Develop/Implement CMOM Program (CWA)
- ☐ Environmental Management Review
- ☐ Establishment Registered
- ☐ Establishment Terminated
- ☐ Financial Responsibility Requirement
- ☐ Information Letter Response
- ☐ Institutional Controls – Administrative/Legal
- ☐ Institutional Controls - Engineering
- ☐ Labeling
- ☐ Leak Detection (CAA)
- ☐ Monitoring
- ☐ Notification
- ☐ Permit Application
- ☐ Planning
- ☐ Provide Site Access
- ☐ Recordkeeping
- ☐ Reporting
- ☐ Site Assessment/Characterization
- ☐ Spill Notification
- ☐ Stormwater Site Inspection
- ☐ Testing/Sampling
- ☐ Training
- ☐ HST Release Detection
- ☐ Work Practices

REDACTED

Exemption 5 ☒ Predecisional/Deliberative
☐ Attorney work product
☐ Attorney-client privilege

Exemption 7

- ☒ (A) Interference with Enforcement Proceedings
☐ (B) Right to Fair Trial
☐ (C) Unwanted Invasion of Personal Privacy

Has EPA Taken Previous Formal Enforcement Action Regarding These Violations? (Does Not Include NOV's)

 Yes No

If Yes, Docket Numbers of Previous Actions _____

36 7125043

10-2008-27

ADMINISTRATIVE ACTION DATA SHEET

(To Be Submitted to OEA When:

(1) A Complaint is Filed;

(2) When a CAFO(b) is Filed, Along with a Case Conclusion Data Sheet;

(3) A Non-Penalty (Compliance) Order is Issued, Along with a Case Conclusion Data Sheet

1. Court Docket/Regional Hearing Clerk Docket No. RCRA-UST-04-2009-0001

2. Case Name/Site Name AM Food & Gas

Lead EPA Attorney Susan Capel

Phone No. (404) 562-9566

EPA Program Contact Ben Singh

Phone No. (404) 562-8922

FACILITY INFORMATION

If More Than One Facility, Please Complete This Section For **EACH** Facility.)
(Use Location of Site of the Violation. Do **NOT** Use a P.O. Box Number.)

9. Facility Name AM Food & Gas

10. Street Address 11670 Jones Bridge Road County Fulton
City Alpharetta State Georgia Zip (REQUIRED) 30005

Primary 4-Digit SIC Code 5411

Other 4-Digit SIC Codes _____

EPA FRS or ICIS No. 110024530444

ICIC# 7826093

Is This Indian Land? _____ Yes ☒ No
If Yes, What Tribe? _____

Is This a Small Business? ☒ Yes _____ No
("A Person, corporation, partnership, or other entity that employs 100 or fewer employees.")

Has an EJ Analysis Been Completed? _____ Yes ☒ No
If No, Please See Serdar Ertep at 2-9683 Before Continuing

Is the Facility Located in a Potential EJ Area of Concern? _____ Yes _____ No ☒
If Yes: _____ Low Income _____ Minority Population _____ Both _____ Other

Note: Question Numbers Correspond With the Case Conclusion Data Sheet Guidance Booklet, Dated August 2004.

If You Have Any Questions, Please Contact Teresa Shirley at 2-9647 or Priscilla Johnson at 2-9614.

Federal Facility Information:

Is this a Government-owned/Government-operated facility? ☐ Yes ☒ No

Is this a Government-owned/Contractor-operated facility? ☐ Yes ☒ No

Is this a Government-owned/Privately-operated facility? ☐ Yes ☒ No

Is this a Privately-owned/Government-operated facility? ☐ Yes ☒ No

Is this a Formerly Used Defense Site (FUD)? ☐ Yes ☒ No

Is this a Privately-owned/Privately-operated facility that abuts a federal facility?

☐ Yes ☒ No

If Yes, then:

Does the facility have a formal relationship with the federal property and are the operations of the privately-owned facility dependent on the federal property?

☐ Yes ☒ No

Do operations/activities at the facility affect the federally-owned property?

☐ Yes ☒ No

Is this a contractor or other private party conducting construction, maintenance, renovation, abatement, or demolition on federally-owned property? ☐ Yes ☒ No

Is this a privately-owned transporter of products or wastes whose operations or incidents (e.g., spills) related to those operations occurred within the fence line of the federal facility? ☐ Yes ☒ No

Is this an Imholding – defined as Privately-owned/Privately-operated facility that are totally or partially encircled by the Government-owned/Government-operated facility? ☐ Yes ☒ No

Is this a Federal Facility located on American Indian or Tribal land (e.g., schools or public health centers operated by the Bureau of Indian Affairs or the Indian Health Service)? ☐ Yes ☒ No

Is this a Non-Federal Leasees operating within a Federal Facility who is granted use of government land by a rental or real estate agreement or title transfer with a reversionary clause (e.g., municipal landfills, oil and gas, mining)? ☐ Yes ☒ No

Is this a Federal agency tenant who conducts operations on property leased from another Federal agency? ☐ Yes ☒ No

Is this a permittee operating within a Federal Facility who is granted a permit for short-term use of government land? ☐ Yes ☒ No

Is this a claimant having properly located, recorded, and maintained mining claims under the 1872 Mining Law on federal lands for which a patent has not been issued? ☐ Yes ☒ No

Is this a Federal Facility that has been granted permits for use of the land of another Federal agency for up to 20 years administratively if the intended use does not involve destruction of the land (i.e., military uses, dams)?

☐ Yes ☒ No

Respondents/PRF's List:

[illegible]

Continue on Attached Page, If Necessary

FY 2009 Priority Information

MOA Priority Information

(Check All That Apply)

Air Toxics:

- ☐ LDAR
- ☐ Flares
- ☐ Surface Coating

Financial Assurance:

- ☐ RCRA Closure/Post Closure
- ☐ RCRA Corrective Action
- ☐ CERCLA

Tribal:

- ☐ Drinking Water
- ☐ Schools
- ☐ Solid Waste
- ☐ Other

NSR/PSD:

- ☐ Coal-Fired Power Plants
- ☐ Cement
- ☐ Glass Manufacturing
- ☐ Sulfuric Acid Plants
- ☐ Other Priority NSR Sectors
- ☐ Nitric Acid Plants

Mineral Processing:

- ☐ Non-Phosphoric Acid
- ☐ Phosphoric Acid
- ☐ Mining - Other

Wet Weather:

- ☐ CAFO
- ☐ CSOs
- ☐ CSOs \geq 50k Serv. Population
- ☐ SSOs
- ☐ SW Top 100 Homebuilder Construction
- ☐ SW Homebuilder Construction-Not in Top 100
- ☐ SW Top 6 Big Box Store Construction
- ☐ SW Big Box Store Construction-Not in Top 6
- ☐ SW Top 7 Ready-Mix/Sand & Gravel
- ☐ SW Ready-Mix/Sand & Gravel-Not in Top 7
- ☐ SW MS4 Audit
- ☐ SW MS4 Inspection
- ☐ SW Industrial Non-Construction
- ☐ SW Industrial Construction
- ☐ SW Ports (Exploratory)
- ☐ SW Road Building (Exploratory)
- ☐ Federal Facility Construction (Exploratory)

Regional Priorities

(Check All That Apply)

FIFRA:

- ☐ Antimicrobial Labeling

TSCA:

- ☐ Lead Disclosure Rule (Section 1018)
- ☐ Direct Consumables
- ☐ HUD & CDC Lead Collaboration
- ☐ Import Brokers

RCRA:

- ☐ BIFs and Organic Air Emissions

Violation Types

CAA

- | | |
|---|---|
| <input type="checkbox"/> Asbestos Demolition/Renovation Work Practice Req. | <input type="checkbox"/> Air Emissions Not Otherwise Specified |
| <input type="checkbox"/> Asbestos – Failure to Maintain Records | <input type="checkbox"/> Tampering w/Emissions Control Device |
| <input type="checkbox"/> Asbestos – Failure to Report; Notify; or Inform | <input type="checkbox"/> Violation of Reporting Requirements |
| <input type="checkbox"/> Asbestos – Inspect | <input type="checkbox"/> Violation of Requirement to Monitor/Maintain Records |
| <input type="checkbox"/> Asbestos Requirement Violation | <input type="checkbox"/> Other/Miscellaneous |
| <input type="checkbox"/> Asbestos – Sample | <input type="checkbox"/> Opacity |
| <input type="checkbox"/> Acid Rain | |
| <input type="checkbox"/> Discharge, Emission or Activity w/out Required Permit | |
| <input type="checkbox"/> Violation of Permit Requirement | |
| <input type="checkbox"/> National Emission Standard for Hazardous Air Pollutant | |
| <input type="checkbox"/> New Source Review | |
| <input type="checkbox"/> New Source Performance Standard | |
| <input type="checkbox"/> Prevention of Significant Deterioration | |
| <input type="checkbox"/> Risk Management Plan | |
| <input type="checkbox"/> Stratospheric Ozone Protection Plan | |

NPDES

- | | |
|---|--|
| <input type="checkbox"/> Animal Feedlots | <input type="checkbox"/> Violation of Reporting Requirements |
| <input type="checkbox"/> Discharge, Emission, or Activity w/out Required Permit | <input type="checkbox"/> Violation of Sludge Disposal Requirements |
| <input type="checkbox"/> Sanitary Sewer Overflows | <input type="checkbox"/> Violation of Requirements of Monitor/Maintain Records |
| <input type="checkbox"/> Stormwater Overflows | |
| <input type="checkbox"/> Violation of a Permit Requirement | |

WETLANDS

- | | |
|--|--|
| <input type="checkbox"/> Discharge Without or In Violation of a 404 Permit | <input type="checkbox"/> Other/Miscellaneous |
| <input type="checkbox"/> Violation of a Previously Issued AO | |

RCRA

- | | |
|---|---|
| <input type="checkbox"/> Battery Management Act Violation | <input type="checkbox"/> Labeling or Marking Requirements |
| <input type="checkbox"/> Benzene Waste | <input type="checkbox"/> Land Ban |
| <input type="checkbox"/> Bevill Enforcement Case | <input type="checkbox"/> Monitoring Requirements |
| <input type="checkbox"/> Closure & Post Closure Requirement | <input type="checkbox"/> K061 Initiative |
| <input type="checkbox"/> Container Requirements | <input type="checkbox"/> Misidentified Waste |
| <input type="checkbox"/> Discharge, Emission, or Activity w/out Required Permit | <input type="checkbox"/> Permit Evader |
| <input type="checkbox"/> Disposal Facility Requirements – Not Otherwise Specified | <input type="checkbox"/> Treatment Facility Requirement |
| <input type="checkbox"/> Exports Violation | <input type="checkbox"/> Violation of a Previously Issued AO |
| <input type="checkbox"/> Imports Violation | <input type="checkbox"/> Violation of a Permit Requirement |
| <input type="checkbox"/> Failure to Notify | <input type="checkbox"/> Violation of a Requirement of Monitor/Maintain Records |
| <input type="checkbox"/> Failure to Report Information as Required | |
| <input type="checkbox"/> General Facility Requirements | |
| <input type="checkbox"/> Groundwater Monitoring Requirements | |

OPA

- ☐ Failure to Have an Adequate SPCC Plan
- ☐ Spill
- ☐ Other

UST

- | | |
|--|--|
| <input checked="" type="checkbox"/> Leak Detection and Repair | <input type="checkbox"/> Violation of Reporting Requirements |
| <input checked="" type="checkbox"/> Requirements Other Than LDAR | <input checked="" type="checkbox"/> Violation of Requirement to Monitor/Maintain Records |

EPCRA & EPCRA/CERCLA

- | | |
|---|---|
| <input type="checkbox"/> CERCLA Reportable Quantity Discharge Violation | <input type="checkbox"/> Violation of Requirement to Monitor/Maintain Records |
| <input type="checkbox"/> Toxics Release Inventory (Section 313) | <input type="checkbox"/> Violation of Reporting Requirements |

UIC

- ☐ Casing and Cementing
- ☐ Injection Between Outermost Casing
- ☐ Injection Beyond Authorized Pressure
- ☐ Mechanical Integrity
- ☐ No Approved Plugging & Abandonment Plan
- ☐ Non-Compliance w/Plugging & Abandonment Plan
- ☐ Unauthorized Injection
- ☐ Unauthorized Operation of Class IV Well
- ☐ Monitoring Requirements
- ☐ Unauthorized Brine Discharge
- ☐ Violation of Reporting Requirements
- ☐ Violation of Requirement to Monitor/Maintain Records
- ☐ Other/Miscellaneous

PWS

- ☐ Failure to Submit DMRs
- ☐ Maximum Contaminant Level
- ☐ Monitoring/Reporting
- ☐ Notification to Public
- ☐ Sampling and Analyzing
- ☐ Total Coliform Rule
- ☐ Surface Water Treatment Rule
- ☐ Violation of Permit Requirement
- ☐ Recordkeeping Violations
- ☐ Other/Miscellaneous

TSCA

AHERA:

- ☐ LEA – Clearance
- ☐ LEA – Failure to Implement Mgmt Plan
- ☐ LEA – Failure to Notify
- ☐ Fiber Release
- ☐ Improper Sampling
- ☐ Inspection
- ☐ Management Plan
- ☐ Operations and Maintenance
- ☐ LEA – Response Action
- ☐ LEA – Responsibility
- ☐ LEA – Unaccredited Lab
- ☐ Others – Clearance
- ☐ Others – Inspection
- ☐ Others – Inspection Accreditation
- ☐ Others – Lab
- ☐ Others – Management Plan
- ☐ Others – Response Act. Accreditation
- ☐ Others – Unaccredited Lab
- ☐ Others – Unaccredited Pers. Dev. Mgmt Plan
- ☐ Others – Unaccredited Resp. Act. Workers
- ☐ Others – Unaccredited Work/Accredited Super.
- ☐ Accreditation
- ☐ Certifications and Training Accreditations
- ☐ Course Violations Including Hours – Curriculum
- ☐ Section 5
- ☐ Section 5 (e) / (f)
- ☐ Section 5 General PMN
- ☐ Section 5 TME
- ☐ Section 7 Report Late

- ☐ Section 8(a) Level A
- ☐ Section 8(b) Inventory Update
- ☐ Section 8(c) Recordkeeping
- ☐ Section 8(d) Reporting
- ☐ Section 8(e) Reporting
- ☐ Section 8 Reporting and Recordkeeping
- ☐ Improper Disposal of PCBs/Items
- ☐ Exports Violation
- ☐ Failure to Disclose Information
- ☐ Failure to Include Info In Contract/Lease
- ☐ Failure to Inform of Obligations
- ☐ Failure to Notify
- ☐ Failure to Notify EPA of PCB Waste Activities
- ☐ Failure to Provide Available Information
- ☐ Failure to Report Information as Required
- ☐ Failure to Retain Disclosure Records
- ☐ Falsify Applications, Reports, Information
- ☐ Imports Violation
- ☐ Labeling/Marking Violation
- ☐ Lead-Based Paint
- ☐ Manifesting; No Manifests or Manifest Errors
- ☐ Recordkeeping Violations
- ☐ Refusal to Allow Inspection or Sampling
- ☐ Refusal to Submit Reports (Sections 5-8, 11, 9)
- ☐ Training Course Provider Violation
- ☐ Violation of a Permit Requirement
- ☐ Violation of PCB Rules
- ☐ Violation of Req. to Monitor/Maintain Records
- ☐ Violation of Storage Facility Requirements
- ☐ Violation of Reporting Requirements
- ☐ Worker Protection Standards
- ☐ Work Practice Standards

FIFRA

- ☐ Advertised Pesticide for Unregistered Use
- ☐ Advertised Pesticide Not Registered
- ☐ Container Requirements
- ☐ Exports Violation
- ☐ Imports Violation
- ☐ Failure to Notify
- ☐ Failure to Report Information as Required
- ☐ General Facility Requirements
- ☐ Good Laboratory Practices
- ☐ Packaging Requirements
- ☐ Misuse of a Registered Pesticide
- ☐ Misuse Pesticide Under Experimental Permit
- ☐ No Records for Restricted Use Pesticide
- ☐ Pesticide Not Registered
- ☐ Pesticide Safety Trainer
- ☐ Posting Pesticide
- ☐ Establishment Not Registered (Section 7)
- ☐ Section 3(a) Violation – Unregistered Pesticide
- ☐ Add To/Take From a Pesticide to Defeat Act
- ☐ No Records for Restricted Use Pesticide
- ☐ Pesticide Safety Trainer
- ☐ Posting Pesticide
- ☐ Posting Pesticide Safety Information
- ☐ Test Pesticide on Humans in Violation of Act
- ☐ Composition Differs
- ☐ Adulterated
- ☐ Violations of Reporting Requirements
- ☐ Violations of Requirement to Monitor/Maintain Records

☐ Worker Protection Standards

☐ Other/Miscellaneous

MISBRANDED:

- ☐ Directions for Use Not Adequate
- ☐ Failed to Bear Spanish Signal Word
- ☐ Failed to Bear WPS Reference Statement
- ☐ False Claim on Label
- ☐ Imitation of Another Pesticide
- ☐ Inadequate Precautionary Labeling
- ☐ Ingredient Statement Not on Container
- ☐ Label Does Not Bear Registration Number
- ☐ Label lacks Poison Information
- ☐ Labeling Does Not Bear Use
- ☐ Labeling Incomplete
- ☐ Lack of Prominence
- ☐ Not Registered for Use in USA
- ☐ Package Does Not Conform
- ☐ WPS Reference Statement Contains Errors
- ☐ WPS Reference Statement Is Incomplete

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Dilbag Khera, Am Food and Gas,

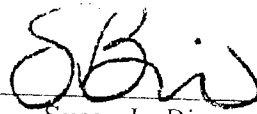
Respondent

)
)
)
)
)

Docket No. RCRA-UST-04-2009-0001

Order Of Designation

Chief Administrative Law Judge Susan L. Biro, U.S. Environmental Protection Agency, Washington, D.C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22.



Susan L. Biro

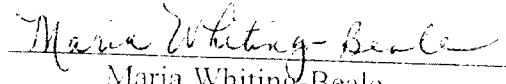
Chief Administrative Law Judge

Dated: December 8, 2009
Washington, D.C.

In the Matter of Dilbag Khera, AM Food and Gas, Respondent
Docket No. RCRA-UST-04-2009-0001

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Of Designation**, dated December 8, 2009, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: December 8, 2009

Original And One Copy By Pouch Mail To:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Copy By Pouch Mail To:

Deborah Benjamin, Esquire
Associate Regional Counsel
U.S. EPA
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 3030-8960

Copy By Regular Mail To:

Steven M. Mills, Esquire
Eckhart Blackert, Esquire
Mills & Hoopes, LLC
1550 North Brown Road, Suite 130
Lawrenceville, GA 30043

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

Dilbag Khera, Am Food and Gas,

Respondent

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Docket No. RCRA-UST-04-2009-0001

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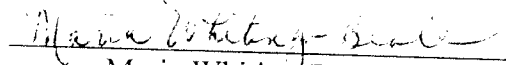
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Mills & Hoopes, LLC
1550 North Brown Road, Suite 130
Lawrenceville, GA 30043

**THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the matter of:)	DOCKET NO: RCRA-UST-04-2009-0001
)	
Dilbag Khera)	Proceeding under Section 9006
AM Food and Gas)	of the Resource Conservation
11670 Jones Bridge Road)	and Recovery Act, as amended
Alpharetta, Georgia 30005)	42 U.S.C. § 6991e
)	
Respondent)	
_____)	

**COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO EXTEND TIME TO
FILE ANSWER**

1. On June 1, 2009, Complainant filed the Administrative Complaint referenced above by certified mail, return receipt requested. Pursuant to 40 C.F.R. § 22.16(a), Respondent's Answer was due 30 days after service of the Complaint. The return receipt requested green card shows that the Complaint was received on June 3, 2009. Therefore, the Complaint was served on June 3, 2009. (40 C.F.R.22.5(b)(1)(C)(iii). Accordingly, the Answer was due on July 3, 2009.

2. On July 10, 2009, one week after the Answer was due, Respondent filed with the Regional Hearing Clerk his Motion for an Extension of Time to File Answer, together with his proposed Answer.

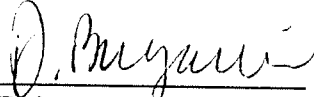
3. Paragraph 7 of Respondent's Motion erroneously states that service of the Complaint was ineffective and improper. Tellingly, Respondent does not provide any facts to support that contention. The Complaint was, in fact, properly served upon Respondent pursuant to all of the requirements found in 40 C.F.R. Part 22.

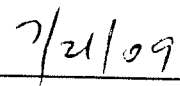
4. Paragraph 1 of Respondent's Motion erroneously states that the Complaint was delivered to Respondent's address on June 5, 2009. The green card shows that the Complaint was actually delivered, and received on June 3, 2009.

5. Paragraph 5 of Respondent's Motion erroneously states that Respondent retained counsel three days after it's Answer was due, on July 8, 2009. Since the Answer was due on July 3, 2009, Respondent did not retain counsel until five days after the Answer was due.

6. Having hereby clarified certain erroneous facts in Respondent's Motion, Complainant does not object to the Court allowing Respondent to file his proposed Answer.

Respectfully submitted,


Deborah S. Benjamin, Esq.
Associate Regional Counsel


Date

**THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the matter of:

**Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005**

Respondent

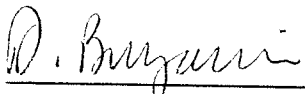
) **DOCKET NO: RCRA-UST-04-2009-0001**
)

) **Proceeding under Section 9006**
) **of the Resource Conservation**
) **and Recovery Act, as amended**
) **42 U.S.C. § 6991e**
)
)

NOTICE OF SUBSTITUTION OF COUNSEL

Please be advised that from this date forward, until further notice, Deborah S. Benjamin is Complainant's new attorney of record for the above reference matter.

Respectfully submitted,



Deborah S. Benjamin, Esq.
Associate Regional Counsel

7/21/09

Date

In the matter of Dilbag Khera, RCRA-UST-04-2009-0001

CERTIFICATE OF SERVICE

I certify that Complainant's **Reply to Respondent's Motion for Extension of Time to File Answer, and Notice of Substitution of Counsel**, was sent this 21st day of July, 2009, in the following manner to the addressees below:

Hand Delivery - Original and one copy

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909

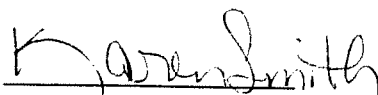
Hand Delivery - one copy

Deborah Benjamin
Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909

By Certified Mail, Return Receipt Requested - one copy

Steven M. Mills, Esq.
Mills & Hoopes, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043

July 21, 2009



Karen Smith
Legal Tech
RCRA Branch
U.S. Environmental Protection Agency
61 Forsyth St., 13th Floor
Atlanta, GA 30303-3104

**THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the matter of:

**Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005**

Respondent

) **DOCKET NO: RCRA-UST-04-2009-0001**
)

) **Proceeding under Section 9006**
) **of the Resource Conservation**
) **and Recovery Act, as amended**
) **42 U.S.C. § 6991e**
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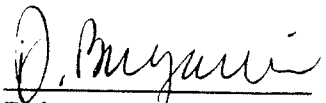
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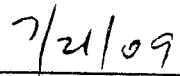
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Respectfully submitted,


Deborah S. Benjamin, Esq.
Associate Regional Counsel


Date

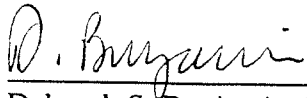
THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the matter of:)	DOCKET NO: RCRA-UST-04-2009-0001
)	
Dilbag Khera)	Proceeding under Section 9006
AM Food and Gas)	of the Resource Conservation
11670 Jones Bridge Road)	and Recovery Act, as amended
Alpharetta, Georgia 30005)	42 U.S.C. § 6991e
)	
Respondent)	
_____)	

NOTICE OF SUBSTITUTION OF COUNSEL

Please be advised that from this date forward, until further notice, Deborah S. Benjamin is Complainant's new attorney of record for the above reference matter.

Respectfully submitted,



Deborah S. Benjamin, Esq.
Associate Regional Counsel

2/21/09

Date

2/21/09 2:10:05
EPA/RO/04/UST/0001
RCRA-UST-04-2009-0001

In the matter of Dilbag Khera, RCRA-UST-04-2009-0001

CERTIFICATE OF SERVICE

I certify that Complainant's **Reply to Respondent's Motion for Extension of Time to File Answer, and Notice of Substitution of Counsel**, was sent this 21st day of July, 2009, in the following manner to the addressees below:

Hand Delivery - Original and one copy

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909

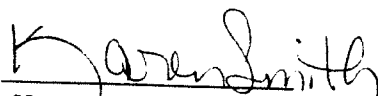
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Deborah Benjamin
Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Environmental Accountability
61 Forsyth Street, S.W.
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By Certified Mail, Return Receipt Requested - one copy

Steven M. Mills, Esq.
Mills & Hoopes, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043

July 21, 2009



Karen Smith
Legal Tech
RCRA Branch
U.S. Environmental Protection Agency
61 Forsyth St., 13th Floor
Atlanta, GA 30303-3104



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

July 15, 2009

Chief Administrative Law Judge
U. S. Environmental Protection
Agency--(Mail Code 1900L)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Dilbag Khera
Docket No: RCRA-04-2009-0001
Proposed Penalty Payment: \$15,544

Dear Judge Biro:

In pursuant to Proceedings under Section 9006 of the Resource Conservation and Recovery Act ('RCRA'), as amended, 42 U.S.C. § 6991(e) of the 40 C.F.R. Part 22, the 'Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits.' The above referenced matter is hereby referred to you for assignment of an Administrative Law Judge.

The parties to this proceeding are represented by:

Mr. Susan Capel
Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Environmental Accountability Division
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and

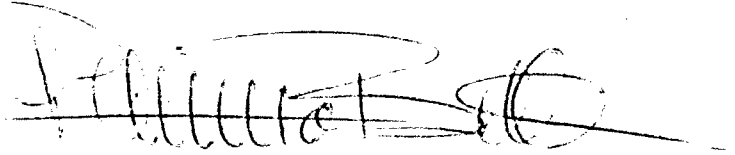
Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Mr. Steven M. Mills
MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville Georgia 30043

-2-

Copies of all documents received to date in this matter are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Bullock", with a large, stylized flourish at the end.

Patricia Bullock
Regional Hearing Clerk

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

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Proceeding under Section 9006 of the
Resource Conservation and Recovery
Act, as amended, 42 U.S.C. §6991e

Docket No. RCRA-UST-04-2009-0001

RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT

COMES NOW the Respondent, DILBAG KHERA D/B/A AM FOOD AND GAS ("Respondent"), and files this Respondent's Answer to Administrative Complaint, filed by the Environmental Protection Agency ("Complainant"), and showing the following:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Complainant's Complaint, and each count thereof attempted to be stated, fails to state a claim upon which relief can be granted against this answering Respondent.

SECOND AFFIRMATIVE DEFENSE

Respondent acted in good faith and with a reasonable belief that his actions were lawful at all times and places mentioned in Complainant's Complaint.

THIRD AFFIRMATIVE DEFENSE

The Complaint, and each count therein attempted to be stated, is barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Any alleged failure to comply with laws and regulations, or any compliance delay, was wholly or partially caused by the actions of the Federal and/ or State government, and civil penalties, if any, are inappropriate or should be reduced in proportion to the absolute or proportionate share of governmental responsibility.

FIFTH AFFIRMATIVE DEFENSE

Any alleged failure to comply with laws and regulations, or any compliance delay, was wholly or partially attributable to causes beyond the reasonable control of the Respondent herein, and civil penalties, if any, should be reduced to the absolute or relative proportions.

SIXTH AFFIRMATIVE DEFENSE

Respondent, at all times and places mentioned in Complainant's Complaint, exercised good faith efforts to comply with applicable regulatory requirements.

SEVENTH AFFIRMATIVE DEFENSE

The Complainant's Complaint, and each count therein attempted to be stated, is barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

The Complainant's Complaint, and each cause of action therein attempted to be stated, fails to state a claim for violation of federal laws and statutes on the ground that the RCRA statute and regulations alleged to have been violated are vague, ambiguous, and do not impart notice to persons affected as to conduct proscribed and/or prohibited.

NINTH AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the matters alleged in Complainant's Complaint.

TENTH AFFIRMATIVE DEFENSE

Respondent was not served with proper notice of said Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

Respondent answers the individually numbered paragraphs in Complainant's Administrative Complaint as follows:

1.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. Respondent is without sufficient knowledge to admit or deny all other allegations of Paragraph 1 and therefore, such allegations stand denied.

2.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 2 are hereby denied.

3.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 3 are hereby denied.

4.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 4 are hereby denied.

5.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 5 are hereby denied.

6.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 6 are hereby denied.

7.

Denied as stated.

8.

Denied as stated.

9.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 9 are hereby denied.

10.

Denied as stated.

11.

Respondent states that the regulations and statutes referenced speak for themselves. Respondent further states that Respondent was not the "operator" of the facility at said time. All other allegations contained in Paragraph 11 are hereby denied.

12.

Denied as stated.

13.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent is without sufficient knowledge to admit or deny all other allegations of Paragraph 13 and therefore, such allegations stand denied.

14.

Denied as stated.

15.

Respondent denies that Respondent failed to have any records on site. Respondent further states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations, therefore, the remaining allegations within Paragraph 15 stand denied.

16.

Denied as stated.

17.

Denied as stated.

18.

Respondent states that the inspector's note/report speaks for itself. Respondent is without sufficient knowledge to admit or deny all other allegations of said paragraph and therefore, such allegations stand denied.

19.

Denied as stated.

20.

Denied as stated.

21.

Denied as stated.

22.

Denied as stated.

23.

Denied as stated.

24.

Denied as stated.

25.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 25 are hereby denied.

26.

Denied as stated.

27.

Respondent states that Respondent never received said notice. Respondent further states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 27 are hereby denied.

28.

Admitted.

29.

Admitted.

30.

Respondent is without sufficient knowledge to admit or deny that the facility operates under a new name and new ownership, and was determined by Georgia EPD to be in compliance. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 30 are hereby denied.

31.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 30 of Complainant's Administrative Complaint as though fully contained herein.

32.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 32 are hereby denied.

33.

Denied as stated.

34.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 34 are hereby denied.

35.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 34 of Complainant's Administrative Complaint as though fully contained herein.

36.

Respondent states that the regulations and statutes referenced speak for themselves.

All other allegations contained in said paragraph are hereby denied.

37.

Denied as stated.

38.

Respondent denies that Respondent failed to comply with the release detection requirements for underground piping at the facility. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 38 are hereby denied.

39.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 38 of Complainant's Administrative Complaint as though fully contained herein.

40.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in said paragraph are hereby denied.

41.

Denied as stated.

42.

Respondent denies that Respondent failed to comply with the UST overfill prevention requirements at the facility. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 42 are hereby denied.

43.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 42 of Complainant's Administrative Complaint as though fully contained herein.

44.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 44 are hereby denied.

45.

Denied as stated.

46.

Respondent denies that Respondent failed to comply with the UST recordkeeping requirements at the facility Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in paragraph 46 are hereby denied.

47.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 46 of Complainant's Administrative Complaint as though fully contained herein.

48.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations in Paragraph 48 are denied.

49.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations in Paragraph 49 are denied.

50.

Denied as stated.

51.

Respondent denies that Respondent failed to comply with the requirement to provide information when requested by EPA. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 51 are hereby denied.

52.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations in Paragraph 52 are denied.

53.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 53 and therefore, such allegations stand denied

54.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 54 and therefore, such allegations stand denied

55.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 55 and therefore, such allegations stand denied

56.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 56 and therefore, such allegations stand denied

57.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent states that Respondent desires a hearing be scheduled in this matter. All other allegations contained in Paragraph 57 are hereby denied.

58.

Denied as stated.

59.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 59 and therefore, such allegations stand denied

60.

Respondent admits that, on the date hereof, the original and one copy of this Answer shall be filed with the Regional Hearing Clerk, with a copy being sent to Susan Capel.

61.

Denied as stated.

59.

Denied as stated.

60.

Denied as stated.

61.

Denied as stated.

62.

Denied as stated.

63.

Denied as stated.

64.

Respondent states that the regulations and statutes referenced speak for themselves.
All other allegations contained in Paragraph 64 are hereby denied.

65.

Respondent states that the regulations and statutes referenced speak for themselves.
All other allegations contained in Paragraph 65 are hereby denied.

66.

Respondent states that the regulations and statutes referenced speak for themselves.
All other allegations contained in Paragraph 66 are hereby denied.

67.

Respondent states that the regulations and statutes referenced speak for themselves.
All other allegations contained in Paragraph 67 are hereby denied.

68.

Respondent denies that Respondent violated any laws, rules and/or regulations

and therefore does not owe any such amount. All other allegations contained in Paragraph 68 are hereby denied.

69.

Respondent denies that Respondent violated any laws, rules and/or regulations and therefore does not owe any such amount. All other allegations contained in Paragraph 69 are hereby denied.

70.

Respondent denies that Respondent violated any laws, rules and/or regulations and therefore does not owe any such amount. All other allegations contained in Paragraph 70 are hereby denied.

71.

Respondent denies that Respondent violated any laws, rules and/or regulations and therefore does not owe any such amount. All other allegations contained in Paragraph 71 are hereby denied.

73.

Any other allegations contained in the Complaint that are not specifically addressed herein are denied.

WHEREFORE, Respondent respectfully request as follows:

- (a) That the Presiding Officer dismiss with prejudice all claims asserted against Respondent in this action;
- (b) That the Presiding Officer schedule a hearing date whereby Respondent may be heard;
- (b) That this Court award Respondent attorneys fees, costs of litigation and court

costs; and

- (c) That this Court award Respondent all other relief as this Court deems just and proper.

Respectfully submitted,

MILLS & HOOPES, LLC
Attorneys for Respondent

By: 

Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
(770) 513-8111
(770) 513-8150

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

*
*
* Proceeding under Section 9006 of the
* Resource Conservation and Recovery
* Act, as amended, 42 U.S.C. §6991e
*
* Docket No. RCRA-UST-04-2009-0001
*
*

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, I filed the Foregoing Pleading with the Regional Hearing Clerk and mailed a copy of same by First Class U.S. Mail, with sufficient postage affixed thereto, to the following attorneys of record:


Susan Capel
Associate Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303-8909

This the 9th day of July, 2009.

Respectfully submitted,

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
(770) 513-8111

MILLS & HOOPES, LLC
Attorneys for Respondent

By: 
Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

*
*
* Proceeding under Section 9006 of the
* Resource Conservation and Recovery
* Act, as amended, 42 U.S.C. §6991e
*
* Docket No. RCRA-UST-04-2009-0001
*
*

**RESPONDENT'S MOTION TO EXTEND TIME TO
RESPOND TO ADMINISTRATIVE COMPLAINT**

COMES NOW the Respondent, DILBAG KHERA D/B/A AM FOOD AND GAS ("Respondent"), and files this Motion to Extend Answer Deadline, showing the following:

1.

The Administrative Complaint against Respondent was filed on June 1, 2009. A certified letter containing a copy of same was delivered to Respondent's address on June 5, 2009, in South Carolina, however, Respondent was not present at the time of delivery, and did not sign for the mailing.

2.

The commercial property location at issue within this Proceeding is located within the State of Georgia, and individual Respondent resides within South Carolina.

3.

Respondent was not timely notified of the contents of the certified letter, as he had not been aware of its delivery.

4.

Respondent experienced difficulty in locating and retaining local counsel in Atlanta, Georgia on short notice, which was exacerbated by Respondent's geographic location.

5.

Respondent was able to locate and retain local counsel on July 8, 2009, three days after the initial expiration of the thirty (30) day answer deadline.

6.

Respondent is not involved in the operation, possession, control or otherwise, of the property at issue, making the location and retrieval of all relevant daily business operational records unduly burdensome.

7.

Respondent contends that Service as effectuated was ineffective and improper. However, to the extent that it was effected notoriously upon Respondent, the period for timely response to the Administrative Complaint should be tolled to allow Respondent's Answer to be filed simultaneously herewith.

8.

A Motion for Default has not been filed by Complainant as of the date of the instant Pleading.

9.

Under the terms of 40 C.F.R. § 22.7, and 45 F.R. 24363, the Presiding Officer may extend the period of time within which to respond for good cause shown, and excusable neglect in filing the Motion to Extend.

10.

In the instant case, Respondent was not properly served with the Administrative Complaint, was unable to timely locate and retain local counsel, and faced the burdensome requirement of retrieving voluminous operational records for a non-existent business, all based on Respondent's geographic and time limitations.

11.

Respondent is ready, willing, and able to proceed, and shows that he has prepared an Answer to be filed simultaneously with the instant pleading. The Answer to be filed is attached hereto and incorporated herein by reference.

12.

Complainant would not be unduly prejudiced by Respondent's filing of an Answer, where Complainant anticipated and prepared for a timely responsive pleading to be filed by Respondent, and must already provide sufficient cause on the record to justify entry of Default against Respondent with the allegations of the Administrative Complaint.


WHEREFORE, Respondent respectfully requests as follows:

- (a) That the Presiding Officer issue an Order extending the time to Respond to the Administrative Complaint;
- (b) That Respondent be permitted to file his Answer simultaneously with the instant pleading;
- (c) that this Court award Respondent all other relief as this Court deems just and proper.

[Signature Page To Follow]

Respectfully submitted,

MILLS & HOOPES, LLC
Attorneys for Respondent

By: 
Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
(770) 513-8111
(770) 513-8150

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

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* Proceeding under Section 9006 of the
* Resource Conservation and Recovery
* Act, as amended, 42 U.S.C. §6991e
*
* Docket No. RCRA-UST-04-2009-0001
*
*

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, I filed the Foregoing Pleading with the Regional Hearing Clerk and mailed a copy of same by First Class U.S. Mail, with sufficient postage affixed thereto, to the following attorneys of record:

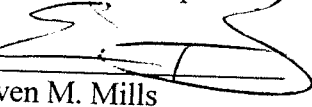
Susan Capel
Associate Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303-8909

This the 9th day of July, 2009.

Respectfully submitted,

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
(770) 513-8111

MILLS & HOOPES, LLC
~~Attorneys for Respondent~~

By: 
Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 01 2009

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Dilbag Khera
4667 Jefferson Davis Highway
Clearwater, South Carolina 29842

Dilbag Khera
1108 Hampton Ave., NW
Aiken, South Carolina 29482

RE: Administrative Complaint
Docket No.: RCRA-UST- 04-2009-0001

Dear Mr. Khera:

Enclosed please find an Administrative Complaint (Complaint) and Final Order. The documents have been issued pursuant to the authority of Section 9006 of RCRA, 42 U.S.C. § 6991(e).

The Complaint specifies this Agency's determination of certain violations of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6991, et seq. The Complaint states in full the reasons for the determination that violation(s) have occurred at the A.M. Food and Gas facility formerly owned by you and located at 11670 Jones Bridge Road, Alpharetta, Georgia. In brief, as determined from an EPA inspection on January 6, 2006, Dilbag Khera, as owner of the A.M. Food and Gas facility, failed to comply with the requirements for Underground Storage Tanks as required by Section 9005 of RCRA, 42 U.S.C. § 6991d, and 40 C.F.R. Part 280. A proposed civil penalty of Twelve Thousand Sixty Nine Dollars (\$ 12,069) is assessed in the Complaint.

The rules of procedure governing this civil administrative litigation are set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (C.R.O.P.), codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

By law, you have the right to request a Hearing on the Complaint. Should you desire to contest any matter of law or material fact set forth in the Complaint, or the appropriateness of the proposed penalty, you must file a written Answer and request for a hearing with the Regional Hearing Clerk within thirty (30) days from receipt of this Complaint, pursuant to 40 C.F.R. § 22.15. Unless you file an Answer or pay the penalty, you may be found in default pursuant to 40 C.F.R. § 22.17.

Any Answer to the Complaint must clearly and directly admit, deny or explain each of the factual allegations in the Complaint, must specify the issues which are in dispute, must state the specific factual or legal grounds for your defense, and must state whether you are requesting a hearing pursuant to 40 C.F.R. § 22.15. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Address the Answer to:

Region 4 Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

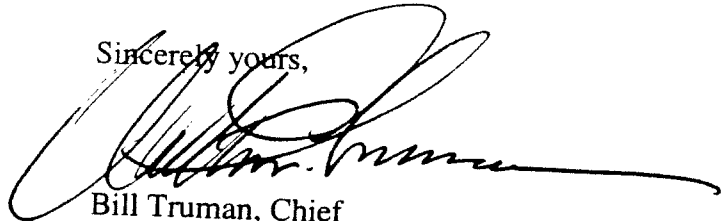
A copy of your Answer and/or hearing request and all other documents that you file in this action also should be sent to:

Susan Capel
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

It is EPA's policy to encourage all parties against whom it files a Complaint to pursue the possibility of settlement. Whether or not a hearing is requested, you may request a settlement conference with EPA to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. A request for a settlement conference alone however, will not stay the thirty (30) day period for filing an Answer and hearing request. If you desire a hearing, an Answer should be filed.

If you have any questions or wish to arrange an informal settlement conference, please contact Susan Capel, Associate Regional Counsel, at (404) 562-9566. EPA urges your prompt attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bill Truman", with a large, stylized flourish extending from the end of the signature.

Bill Truman, Chief
Underground Storage Tank Section
RCRA Division

Enclosures

cc: Susan Capel, EAD
Regional Hearing Clerk

23

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

RESPONDENT

Proceeding under Section 9006
of the Resource Conservation
and Recovery Act, as amended,
42 U.S.C. § 6991e

Docket No. RCRA-UST-04-2009-0001

ADMINISTRATIVE COMPLAINT

I. INTRODUCTION

1. This Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as "RCRA"), 42 U.S.C. Section 6991e, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("C.R.O.P."), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA Region 4, who has in turn delegated it to the Director, RCRA Division, EPA Region 4 ("Complainant").

2. EPA hereby notifies Dilbag Khera ("Respondent") that EPA has determined that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991 - 6991i, EPA's regulations thereunder at 40 C.F.R. Part 280 (Thomson/West current through March 13, 2009, and the State of Georgia's Underground Storage Tank ("UST") program, as approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Section 9006(a) - (d) of RCRA, 42 U.S.C. § 6991e(a) - (d), authorizes EPA to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been approved by EPA. Under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), EPA may assess a civil penalty against any person who, among other things, violates any requirement of the applicable federal or state UST program requirements.

3. Effective July 9, 1991, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A (Thomson/West current through March 13, 2009), the State of Georgia was granted final authorization to administer a state UST management program in lieu of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991 - 6991i. Through this final authorization, the provisions of the State of Georgia's UST management program are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

4. The Georgia Environmental Protection Division (EPD) is charged with the statutory duty of enforcing the laws of the State relating to the storage of petroleum in underground storage tanks, as specified in GA Code Ann., § 12-13-1 et seq., and in GA. COMP. R. & REGS. r. 391-3-15 et seq. Georgia has adopted and incorporated by reference 40 C.F.R. Part 280, Subparts B, C, D, E, F, and G, into GA. COMP. R. & REGS. r. 391-3-15 et seq. Therefore, for the purpose of this Complaint, a citation to the requirements of 40 C.F.R. Part 280, Subparts B, C, D, E, F, and G, shall constitute a citation to the equivalent State requirements.

5. EPA has given EPD prior notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. ALLEGATIONS AND DETERMINATIONS

6. Respondent is a "person" as defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), 40 C.F.R. § 280.12, and GA. COMP. R. & REGS. r. 391-3-15-.02(o) (Thomson/West current through amendments received through December 31, 2008).

7. The Respondent's Facility, A.M. Food and Gas, was located at 11670 Jones Bridge Road, Alpharetta, Georgia 30005 (hereinafter, the Facility).

8. Respondent first provided notification of UST activity to the Georgia Department of Natural Resources in 2002.

9. On December 14, 2005, EPA sent Respondent a "Notice of EPA Inspection of Underground Storage Tank Systems," via certified mail. The Notice advised of an imminent inspection and requested that the Facility have certain records available to allow evaluation of the Facility's compliance with the Federal and State UST regulations found at 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq.

10. On January 6, 2006, a representative of EPA Region 4 inspected the Facility.

11. At the time of the inspection, Respondent was the "owner" and/or "operator" of two USTs at the Facility, as those terms are defined in Section 9001(3), (4), and (10) of RCRA,

42 U.S.C. § 6991(3), (4), and (10); and 40 C.F.R. § 280.12; and GA. COMP. R. & REGS. r. 391-3-15-.02(m), (l), and (z).

12. The two USTs at the Facility are fiberglass tanks with a capacity of 12,000 gallons each.

13. At the time of the inspection, Respondent was using the two USTs at the Facility to store gasoline, which is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and GA Code Ann. § 12-3-3.

14. Each UST at the Facility was connected to underground piping that routinely contained regulated substances.

15. At the time of the inspection, the Respondent did not have any records on site to demonstrate compliance with the requirements of 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq. These requirements include release detection for both the USTs and associated piping and spill and overfill control, among other requirements.

16. At the time of the inspection, Respondent was utilizing an Automatic Tank Gauging (ATG) system (Gilbarco EMC) as its method of release detection for the USTs. With this method, a probe permanently installed in the tank is wired to a monitor to provide information on product level and temperature. These systems automatically calculate changes in the product volume that can indicate a leak in the tank. If an anomaly is detected, the device will sound an alarm to alert the owner/operator.

17. At the time of the inspection, the probe used to sense volumetric changes in Tank 1 was not operating.

18. At the time of the inspection, the EPA inspector noted that the alarm lights for the ATG system were on, and the front panel was broken, indicating that the device was not being operated, calibrated, or maintained in a manner that allowed for the detection of a release.

19. Respondent utilizes pressurized piping to convey product from the tanks.

20. At the time of the inspection, the Respondent could not demonstrate that the piping was equipped with automatic line leak detectors.

21. At the time of the inspection, Respondent could not demonstrate that annual line tightness tests were being performed.

22. Respondent utilizes spill buckets for spill prevention during the transfer of product from the delivery tankers to the USTs.

23. At the time of the inspection, the spill buckets were dirty and contained water, which limited their capacity to contain spills.

24. At the time of the inspection, Respondent did not have any overfill devices to prevent a release from occurring while the tank was being filled with product.

25. At the conclusion of the January 6, 2006, inspection, the Respondent was given a list of information to provide to EPA to demonstrate compliance with the requirements of 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq.

26. On January 18, 2006, and again on January 20, 2006, an EPA representative contacted the Facility concerning the status of the information request issued at the time of the inspection. EPA did not receive any response.

27. On September 7, 2006, EPA sent Respondent an information request letter under the authority of RCRA Section 9005, 42 U.S.C. § 6991d. The letter asked for the same information requested in the Notice of Inspection letter dated December 14, 2005, which was sent prior to the inspection, the same information requested by the inspector at the conclusion of the January 6, 2006 inspection, and the same information requested via telephone on January 18 and 20, 2006.

28. Respondent did not provide any of the information requested by EPA and did not contact EPA.

29. Respondent sold the facility in 2008.

30. The Facility now operates under a new name and new ownership and was determined by Georgia EPD to be in compliance with the requirements of 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq. following an inspection conducted in April 2008.

COUNT 1

31. The allegations of preceding paragraphs are incorporated herein by reference.

32. 40 C.F.R. § 280.40(a) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1) requires that owners and operators of new and existing UST systems provide a method or combination of methods of release detection that can 1) detect a release from any portion of the tank or associated piping that routinely contains product; 2) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability; and 3) meets the performance specifications in 40 C.F.R. §§ 280.43 or 280.44 and GA. COMP. R. & REGS. r. 391-3-15 -.07(1).

33. At the time of the inspection, Respondent's ATG system was not being calibrated, operated, and maintained in a manner to provide release detection method for the USTs.

34. Respondent failed to comply with the UST release detection requirements for tanks at its Facility. These acts or omissions constitute a violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.40(a) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1).

COUNT 2

35. The allegations of the preceding paragraphs are incorporated herein by reference.

36. 40 C.F.R. § 280.41(b) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1) require that owners and operators of UST systems must provide release detection for piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the requirements specified under this section. Pressurized piping must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a); and have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

37. At the time of the inspection, Respondent was not performing adequate release detection for the underground piping connected to the USTs that routinely contained regulated substances.

38. Respondent failed to comply with the release detection requirements for underground piping at its Facility. These acts or omissions constitute a violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1).

COUNT 3

39. The allegations of the preceding paragraphs are incorporated herein by reference.

40. 40 C.F.R. § 280.20(c)(1)(ii) and GA. COMP. R. & REGS. r. 391-3-15 -.05(1) require that owners and operators of USTs provide overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full; alert the transfer operator when the tank is no more than 90 percent full by restricting the flow to the tank or triggering a high-level alarm; or restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off the flow into the tank so that none of the fittings located on the top of the tank are exposed to product due to overfilling.

41. At the time of the inspection, Respondent did not have any overfill devices installed.

42. Respondent failed to comply with the UST overfill prevention requirements at the Facility. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.20(c)(ii) and GA. COMP. R. & REGS. r. 391-3-15 -.05(1).

COUNT 4

43. The allegations of the preceding paragraphs are incorporated herein by reference.

44. 40 C.F.R. § 280.34(b) and (c) and GA. COMP. R. & REGS. r. 391-3-15 -.06(1). requires that owners and operators of USTs maintain information documenting UST system repairs and recent compliance with release detection requirements, among other requirements, at the UST site immediately available for inspection or at a readily available alternative site and be provided for the inspection to the implementing agency upon request.

45. At the time of the inspection, Respondent could not provide documentation demonstrating compliance with release detection requirements. Respondent did not provide documentation requested in EPA's information request letter dated September 7, 2006, to show compliance with these requirements.

46. Respondent failed to comply with the UST recordkeeping requirements at its Facility. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.34(b) and (c) and GA. COMP. R. & REGS. r. 391-3-15 -.06(1).

COUNT 5

47. The allegations of the preceding paragraphs are incorporated herein by reference.

48. RCRA Section 9005, 42 U.S.C. § 6991d, provides that any owner or operator of USTs shall, upon request of any representative of EPA, furnish information relating to such USTs.

49. 40 C.F.R. § 280.34 and GA. COMP. R. & REGS. r. 391-3-15 -.06(1). require that owners and operators cooperate fully with requests for document submission pursuant to RCRA Section 9005, 42 U.S.C. § 6991d.

50. EPA requested information from the Respondent on January 6, 2006, at the conclusion of the inspection, verbally in telephone calls on January 18, 2006, and January 20, 2006, and by Information Request letter dated September 7, 2006. Respondent did not comply with any of these information requests.

51. Respondent failed to comply with the requirement to provide information when requested by EPA. These acts or omissions constitute violations of Section 9005 of RCRA, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34 and GA. COMP. R. & REGS. r. 391-3-15 -.06(1).

III. PROPOSED CIVIL PENALTY

52. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty of up to Ten Thousand Dollars (\$10,000) per tank for each day of noncompliance with any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991(b). Pursuant to the *Debt Collection and Improvement Act* of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and the regulations promulgated thereunder [see the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19], for violations occurring after March 15, 2004, the statutory maximum penalty for each tank for each day of violation shall be Eleven Thousand Dollars (\$11,000). Based upon the facts alleged in this Complaint and taking into account the seriousness of the violation and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, a civil penalty of **\$15,544 (Fifteen Thousand Five Hundred Forty Four Dollars)** against Respondent.

53. This proposed penalty has taken into account the particular facts and circumstances of this case pursuant to the November 14, 1990, U.S. EPA Penalty Guidance for Violations of UST Requirements, a copy of which is attached to this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

54. EPA examined the gravity of the aforementioned violations and the economic benefit to the Respondent from either the avoided costs or the delayed costs of compliance in determining the reasonableness of the proposed penalty. The proposed penalty was calculated pursuant to the aforementioned penalty guidance.

55. EPA determined that the potential for harm and the extent of deviation from the regulations varies depending on the violation and the application of the penalty policy (see Paragraph 56 below). The environmental sensitivity multiplier is low because the Facility is not located near rivers or streams, groundwater wells providing a drinking water supply, or an environmentally sensitive area or sensitive populations. The Facility is located along a commercial strip on a major highway near the intersection with another major highway. Residential neighborhoods lying beyond the highway are served by municipal water supplies. Due to an absence of records, EPA was not able to determine the number of days of noncompliance. Therefore, EPA used 1.0 as the days of noncompliance multiplier. EPA also examined the economic benefit to the Respondent from either the avoided costs or the delayed costs. In this case, release detection for the tank is provided automatically by the automatic tank gauging device. However, release detection for piping requires the services of a consultant and

special equipment. EPA determined that the Respondent obtained an economic benefit of \$69 for failure to provide release detection for the piping associated with the tanks.

56. The total proposed penalty against Respondent is summarized below. Extent of Deviation from Requirement/Potential for Harm characterization is contained in parentheses for each violation.

Count 1: failure to provide release detection for tanks (Major/Major)	\$3,869
Count 2: failure to provide release detection for piping (Major/Major)	\$3,938
Count 3: failure to provide overfill prevention (Major/Moderate)	\$1,934
Count 4: failure to comply with recordkeeping requirements (Major/Major)	\$3,869
Count 5: failure to comply with information request (Major/Major)	\$1,934

TOTAL PROPOSED PENALTY AMOUNT	\$15,544
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IV. OPPORTUNITY TO REQUEST A HEARING

57. Pursuant to 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint, the appropriateness of the proposed penalty, or to contend that it is entitled to judgement as a matter of law. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8909, *within thirty (30) days of receipt of this Complaint*. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state and the allegation is deemed denied. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. Failure of the Respondent to admit, deny, or explain any material allegation contained in the Complaint shall constitute an admission of such allegations.

58. ***Respondent's failure to file a written Answer within (30) days of receipt of this Complaint, may result in the filing of a Motion for Default and the issuance of a Default Order. Default by the Respondent constitutes, for purposes of the pending proceedings, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in such a Default Order shall become due and payable by Respondent without further proceedings 30 days after the Default Order becomes final.***

59. Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.

60. The original and one copy of Respondent's Answer, and all other documents that Respondent files in this action should be filed with the Regional Hearing Clerk, as set forth above, and copies of all such filings shall be sent to the following individual who is authorized to receive service relating to this proceeding.

Susan Capel.
Associate Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303-8909
Phone: (404) 562-9566
Fax: (404) 562-9598

V. SETTLEMENT CONFERENCE

61. Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

62. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the proposed Final Order accompanying the Consent Agreement.

63. If you wish to arrange a settlement conference, you or your legal counsel should contact Susan Capel, Associate Regional Counsel, at (404) 562-9566, prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

64. The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within 30 days after the initial decision is served. Pursuant to 40 C.F.R. § 22.7(c), "where a document is served by first class mail or commercial delivery service, but not by overnight or

same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.” Therefore, the maximum time period for the filing of an appeal under 40 C.F.R. § 22.30 is 30 days unless an extension is granted by the EAB. Note that the 45 day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to, nor extend, the 30 days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

65. If Respondent fails to appeal an adverse initial decision to the EAB, in accordance with 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

VII. EX PARTE COMMUNICATIONS

66. Respondent is advised that, after the Complaint is issued, the C.R.O.P. prohibits any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, or any person likely to advise these officials in the decision of this case.

VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

67. Instead of filing an Answer, requesting a Hearing, or requesting an informal settlement conference, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receiving the Complaint, pursuant to 40 C.F.R. § 22.18(a). Such payment can be made by any of the following methods.

68. If paying by check, the Respondent shall submit a cashier's or certified check, payable to “Environmental Protection Agency.” If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

69. If paying by Electronic Fund Transfer (on line payment), the Respondent shall transfer the penalty amount Fifteen Thousand Five Hundred Forty Four Dollars (\$15,544.00) to www.pay.gov. Enter SFO into the “search public forms” field. Open the form and enter the requested information.

70. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

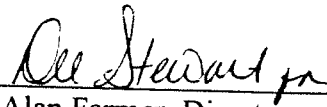
Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

And

Bill Truman, Chief
Underground Storage Tank Section
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

71. Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by the Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

Date: 5/18/09



G. Alan Farmer, Director
RCRA Division
Complainant

ENCLOSURES:

Consolidated Rules of Practice
U.S. EPA Penalty Guidance for Violations of UST Regulations

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing ADMINISTRATIVE COMPLAINT, in the matter of Dilbag Khera, A.M. Food and Gas, Docket No. RCRA-UST-4-2009- 0001 on the parties listed below in the manner indicated:

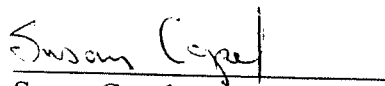
Susan Capel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(Via EPA's internal mail)

Bill Truman
RCRA Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(Via EPA's internal mail)

Dilbag Khera
1108 Hampton Ave., NW
Aiken, South Carolina 29801
(Via Certified Mail)

Dilbag Khera
4667 Jefferson Davis Hwy
Clearwater, South Carolina 29822
(Via Certified Mail)

Dated this 1st day of June, 2009.



Susan Capel
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960